

Submission to inform the preparation by the CEDAW Committee of a list of issues prior to reporting by Germany

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Deutsches Institut
für Menschenrechte

Submission

**to Inform the Preparation by the CEDAW
Committee of a List of Issues Prior to
Reporting by Germany**

January 2020

Contents

1	Preliminary remarks	3
2	Suggested topics to be taken into account for the preparation of a list of issues	3
2.1	Gender responsive impact assessment of business activities	3
2.2	Protection against violence for women in vulnerable situations	4
2.3	Human trafficking	5
2.4	Reproductive rights and health: sterilisation of and administration of contraceptives to intellectually impaired women without free and informed consent	6
2.5	Healthcare: shortage of accessible gynaecological services	7
2.6	Older women	8
2.7	Combatting gender stereotypes in early childhood education	9
2.8	Unnecessary medical interventions on intersex children	10

1 Preliminary remarks

The German Institute for Human Rights (GIHR) is the independent National Human Rights Institution of Germany. It is accredited according to the Paris Principles of the United Nations (A-status) and is specifically mandated to monitor the implementation of the UN Convention on the Rights of Persons with Disabilities and the UN Convention on the Rights of the Child.

In the following, the GIHR addresses a number of selected fields of implementation that it suggests the CEDAW Committee considers as it prepares the list of issues to be transmitted to Germany prior to the submission of its report.

The proposals concern those thematic areas related to women's human rights in which the GIHR has worked, gathered information and gained expertise during the past years.

2 Suggested topics to be taken into account for the preparation of a list of issues

2.1 Gender responsive impact assessment of business activities

Women (including girls) experience business-related human rights abuses in unique ways and are often affected disproportionately. They face multiple forms of discrimination and experience additional barriers in seeking access to effective remedies for business-related human rights abuses.¹ Particularly women human rights and environmental defenders are at high risk of gender-specific and identity-based intersecting forms of discrimination. Impacts of environmental pollution, climate change and land acquisition driven by business activities are not gender-neutral either. Therefore, in order to effectively meet their respective human rights duties and responsibilities under the UN Guiding Principles on Business and Human Rights (UNGPs), States and business enterprises need to give special attention to the unique experiences of women and the structural discrimination or barriers that they face.

The German National Action Plan (NAP) describes measures by the German Federal Government to uphold the state's duty to protect human rights in the business context.² It also lays down German companies' responsibility, with a focus on global supply and value chains. However, business enterprises in Germany have neither been placed under an obligation to undertake gender-responsive due diligence nor been instructed or especially encouraged to do so. Also lacking is a specific approach to remove barriers faced by women in particular in the areas of participation or remedy.

¹ See UN, Working Group on the issue of human rights and transnational corporations and other business enterprises (2019): Gender dimensions of the Guiding Principles on Business and Human Rights, UN Doc. A/HRC/41/43, para. 19.

² Available at <https://www.auswaertiges-amt.de/blob/610714/fb740510e8c2fa83dc507afad0b2d7ad/nap-wirtschaft-menschenrechte-engl-data.pdf> (retrieved: 13/12/2019).

The GIHR recommends that the CEDAW Committee requests Germany to provide information on:

how it intends to apply the gender framework and guidance of the UN Working Group on the issue of human rights and transnational corporations and other business enterprises in developing or revising all initiatives and measures, including the NAP, aimed at implementing the UNGPs.

2.2 Protection against violence for women in vulnerable situations

Women who live in an institution permanently or for a certain period of their lives are at increased risk of experiencing violence.

Homelessness

There are no nation-wide statistics showing the number of homeless persons in Germany.³ Recent estimates assume that women account for between 27 and 37 percent of the homeless population.⁴

Their gender and their situation place women experiencing homelessness particularly at risk of sexual assault and of entering into positions of dependency involving the exchange of sex for shelter. Many of them tend to avoid mixed-gender shelters run by homeless services providers, as these do not provide adequate safety. Homeless women also face barriers to access structures for the protection and support of victims of gender-based violence. Furthermore, it is very difficult for homeless women with greater support needs, such as women suffering from addiction or mental illness, to obtain access to women's shelters.

Disability

The most recent representative study on experiences of violence against women living in institutions run by disability services providers revealed that the majority of women with cognitive impairments living in such institutions experience or have experienced violence as an adult. For instance, over two thirds (68%) of the women surveyed reported experiencing psychological violence or psychologically harmful treatment, more than half (52-58%) had been the victim of one or more physical assaults and one in five (21%) had experienced acts of coercive sexual violence.⁵

Instruments provided by legislation, such as the police-issued banning order (*Wegweisung*) or the temporary injunction under the Act on Protection Against Violence (*Gewaltschutzgesetz*), are often not applicable in such institutions. For

³ On 16/01/2020 the Bundestag adopted a bill introducing the regular reporting on homeless persons in Germany and the collection and processing of data on homeless persons in shelters provided by municipalities. It now has to be adopted by the Bundesrat, see: Document of the Federal Parliament (*Bundestagsdrucksache*) 19/15651.

⁴ Deutsches Institut für Menschenrechte (2019), Entwicklung der Menschenrechtssituation in Deutschland Juli 2018 – Juni 2019, p. 45.

⁵ Schröttle et al (2013): Lebenssituation und Belastungen von Frauen mit Beeinträchtigungen und Behinderungen in Deutschland. Berlin: BMFSFJ, p. 25 (short version).

example, perpetrators who are themselves impaired and entitled to care cannot be simply expelled from an institution without further action.

Individual organisations which run such institutions have responded to this situation by adopting violence protection policies. They are under no legal obligation to do so, however. There is no nation-wide guarantee of standardised protection for women in institutions.

Asylum seekers and refugees

In response to incidents of violence in shelters for asylum seekers, the legislature introduced a new provision to the Asylum Act (*Asylgesetz*), section 44(2a), calling on the Länder to “take appropriate measures” to ensure the protection of women, and other vulnerable groups, in connection with the accommodation of asylum seekers. This wording leaves the Länder a great deal of latitude.

The GIHR recommends that the CEDAW Committee requests Germany to provide information on:

measures being taken at the federal and Länder level to ensure

- the establishment of violence protection policies that protect against gender-based violence in gender-mixed accommodation facilities run by homeless services providers (both municipal and non-state bodies);
- within the context of the planned supplementary reporting on the planned nation-wide homelessness statistics, the compilation of comprehensive information on the situation of homeless women and particularly on those living in “hidden” homelessness and thus not reflected in the statistics;

measures being taken at the federal and Länder level to protect women in institutions run by disability services providers to ensure an effective, nation-wide standard of protection against gender-based violence;

how section 44(2a) Asylum Act is being implemented at the federal, Länder and municipal level.

2.3 Human trafficking

While women who have been victims of trafficking are entitled under German law to claim compensation from the perpetrators for material and non-material harm suffered and for loss of earnings, collection of the full amount of such claims has been and remains extremely rare. This is due in part to the fact that the state does not routinely freeze assets of the perpetrators. The German legislature responded to this problem in 2017 by reforming the criminal law provisions on the asset recovery (*Gesetz zur Reform der strafrechtlichen Vermögensabschöpfung*).

The GIHR recommends that the CEDAW Committee requests Germany to provide information on:

the number of women who have been victims of human trafficking who obtained compensation in criminal law proceedings in 2018 and 2019 and on the number of cases in which assets were recovered for this purpose.

2.4 Reproductive rights and health: sterilisation of and administration of contraceptives to intellectually impaired women without free and informed consent

Too little is being done in Germany to strengthen the ability of women with disabilities to make autonomous decisions on when and how they want to use contraception and on whether they plan to have children. A total of 17% of all women with disabilities aged 15 to 65 have been sterilised⁶ compared to 2% of women nation-wide.⁷ Sterilisation especially affects women with intellectual impairments. A representative survey of women living in institutions run by disability services providers revealed that means used to induce respondents to consent to sterilisation include withholding information, the intentional provision of false information and the creation of emotional pressure.⁸ A small number of women with disabilities have undergone a sterilisation procedure approved by a guardianship court (*Betreuungsgericht*) at the request of a legal guardian (*rechtlicher Betreuer*) (section 1905 of the German Civil Code [*Bürgerliches Gesetzbuch*]). In 2016, 31 such requests for approval of sterilisation were filed; 23 of these were approved.⁹

Administering the contraceptive injection known as the “3-month birth control shot” to women with intellectual impairments is also a frequent practice. One third of the women in residential facilities who had not undergone sterilisation reported receiving such injections,¹⁰ compared to 1% of women using this method nation-wide.¹¹

In 2015, the UN Committee on the Rights of Persons with Disabilities called on Germany to repeal section 1905 and to make it illegal to perform sterilisations without the full and informed consent of the individual concerned, eliminating all exceptions, including those based upon substituted consent or court approval.¹² The Federal Government announced that it intended to review section 1905 and planned on conducting a research project in order to identify the circumstances under which courts approve or reject such requests for sterilisation under section 1905.¹³

⁶ Zinsmeister, Julia (2017): Behinderungen reproduktiver Freiheit und Gesundheit, djbZ 2017/1, p. 16; n. 5, p. 41 (short version).

⁷ BZgA (2019): Verhütungsverhalten Erwachsener 2018. <https://www.forschung.sexualaufklaerung.de/verhuetung/verhuetungsverhalten-2018> (retrieved: 07/01/2020).

⁸ See n. 6.

⁹ Bundesamt für Justiz (2018): Betreuungsverfahren. Zusammenstellung der Bundesergebnisse für die Jahre 1992 bis 2017, p.3.

¹⁰ See n. 6.

¹¹ See n. 7.

¹² UN, Committee on the Rights of Persons with Disabilities (2015): Concluding observations on the initial report of Germany, UN Doc. CRPD/C/DEU/CO/1, para. 38a.

¹³ See Combined Second and Third Periodic Report of the Federal Republic of Germany on the United Nations Convention on the Rights of Persons with Disabilities, p. 30. https://www.gemeinsam-einfach-machen.de/GEM/DE/AS/UN_BRK/Staatenpruefung/Zweite_Staatenpruefung/Bericht_englisch.pdf?__blob=publicationFile&v=2 (retrieved: 07/01/2020).

The GIHR recommends that the CEDAW Committee requests Germany to provide information on:

the results obtained from the research on sterilisation in guardianship law;

conclusions the Federal Government drew from these results and measures it has taken or planned as a result;

the role played by self-advocacy organisations in the design and performance of the research;

measures it has taken to strengthen the right of women with intellectual impairments to make autonomous decisions on contraception and family planning so that medical interventions will only be performed with the free and informed consent of the persons undergoing them.

2.5 Healthcare: shortage of accessible gynaecological services

Women with disabilities in Germany face substantial disadvantages when it comes to access to health services. Only around 23% of all medical practices can be accessed and used by women who use wheelchairs.¹⁴ Adapted examination furniture is available in only 2% of all medical practices.¹⁵ There is currently no data available on the extent to which access to gender-specific health services is provided.¹⁶ Moreover, there are hardly any gynaecologists who are set up to treat women with other types of disabilities and, e.g. offer informational material on reproductive health care in simple language for women with intellectual impairments. There are only five centres and practices in all of Germany that offer outpatient gynaecological consultation hours specifically for women with disabilities.¹⁷

The Federal Government has commissioned a research project aimed at improving gynaecological care for women and girls with disabilities expected to have been completed by the end of 2019.¹⁸

The GIHR recommends that the CEDAW Committee requests Germany to provide information on:

results and recommendations for action obtained in the research project and on policy measures aimed at improving gynaecological health services for women with disabilities that have already been implemented or are being planned;

¹⁴ Bundesministerium für Arbeit und Soziales (2016): Zweiter Teilhabebericht der Bundesregierung über die Lebenslagen von Menschen mit Beeinträchtigungen. Teilhabe – Beeinträchtigung – Behinderung. Bonn: BMAS, p. 321.

¹⁵ Pösl, Nora Feline / Wattenberg, Ivonne / Hornberg, Claudia (2018): Die gynäkologische Versorgung von Frauen mit Behinderungen in Deutschland mit besonderem Fokus auf Nordrhein-Westfalen, Factsheet, p. 4. http://frauenundgesundheit-nrw.de/wp-content/uploads/2019/03/Faktenblatt_Gyn%C3%A4kologischeVersorgung_FrauenmitBehinderungen.pdf (retrieved: 07/01/2020).

¹⁶ See n. 14, p. 321.

¹⁷ See n. 15, p. 5.

¹⁸ See n. 13, p. 8.

accessibility criteria that medical practices must meet or the government's plans to introduce such criteria; in case no such criteria or plans exist, the government should provide an explanation on why not;

funds the State Party is making available to increase the number of accessible medical practices and the extent to which these funds will be used to increase the availability of accessible gynaecological health services.

2.6 Older women

The number of older persons in Germany has risen considerably and women make up the larger part of all older persons.¹⁹ Women are living longer and there are indications that in the future an increasing percentage of them will be living alone.²⁰ Older women make up a very diverse group even in Germany; hence it is imperative that policies give greater consideration to the concerns of older women and to gender equality in old age.

The full realisation of human rights must also be ensured. This is because older women are often overlooked or left out in many discourses; for this reason, it is also essential that data disaggregated by age and sex be collected also for older aged persons, e.g. above 65 years.

Furthermore, very few of the recommendations contained in the CEDAW Committee's General recommendation No. 27 have been implemented in Germany thus far. Thus, older women are not yet fully recognized as an important resource of society (para. 29) and negative stereotypes are still prevailing (para. 36). Protection against violence in all settings needs to be strengthened (para. 37) and discriminatory pension policies need to be eliminated (para. 41).

The GIHR recommends that the CEDAW Committee request the Germany to provide information on:

measures it is taking to make older women visible and take their concerns into account in its gender equality policy;

what data are collected on older women and at which calendar age they are collected;

the extent to which the CEDAW Committee's recommendations in General Recommendation No. 27 have been implemented.

¹⁹ The number of elderly women almost doubled in the period under review (1991-2018), from just under 0.9 million to just over 1.5 million. Women still make up a good two thirds (68%) of the very old persons in 2018. Cf. Destatis (2018): Ältere Frauen sind in der Mehrheit. <https://www.destatis.de/DE/Themen/Querschnitt/Demografischer-Wandel/Aeltere-Menschen/geschlechter.html> (retrieved: 07/01/ 2020).

²⁰ In 2017 Almost three quarters (73%) of the very old women aged 85 and over lived alone, while only one third (33%) of men in the same age group. Cf. Destatis (2018): 45 % der Seniorinnen in Deutschland leben allein. https://www.destatis.de/DE/Presse/Pressemitteilungen/Zahl-der-Woche/2018/PD18_49_p002.html (retrieved: 07/01/2020).

2.7 Combatting gender stereotypes in early childhood education

As highlighted by the CEDAW Committee's General recommendation no. 36, the right to education itself is violated when gender stereotypes are being reproduced in educational institutions.

The purpose of the 2018 Act on Improving the Quality of and on Participation in Child Day-care Facilities (KiQuTG: *Gesetz zur Weiterentwicklung der Qualität und zur Teilhabe in der Kindertagesbetreuung*) is to improve the experiences of participation and contribute towards the creation of equal living conditions for all children (section 1(1) KiQuTG). Thus, it seeks, e.g. to contribute to the elimination of gender stereotypes" (section 2(10) KiQuTG) and facilitate the "inclusive promotion of the development of all children" (§2(1) KiQuTG).

Gender-sensitive education work is identified as a cross-cutting task in the Joint framework of the Länder for early education in day-care centres for children (*Gemeinsamer Rahmen der Länder für die frühe Bildung in Kindertageseinrichtungen*) published by the Standing Conference of the Ministers of Education and Cultural Affairs of the Länder (KMK). However, the education plans of the individual Länder vary significantly with respect to their description and implementation of this task.²¹

There are some publications presenting approaches for use in early education that address the implementation of gender equality for boys and girls in day-care centres for children. Nonetheless, there is still a need for more extensive engagement with gender diversity and stereotypes and for qualifying early education professionals in this regard.²²

The GIHR recommends that the CEDAW Committee requests Germany to provide information on:

concrete measures being taken on the basis of the KiQuTG aimed at contributing towards the elimination of gender stereotyping and at promoting the development of the gender identity in all children;

measures the Federal Government is using to support the elimination of gender stereotypes in materials used in early childhood education;

the extent to which the Federal Government is promoting research on the genesis, reflection on and treatment of gender stereotypes in education practice, particularly in the pre-school area, and the extent to which the findings of such research are informing programmes for the qualification of professionals.

²¹ Cf. Kubandt, Melanie (2016): Relevanzsetzungen von Geschlecht in der Kindertageseinrichtung - theoretische und empirische Perspektiven. GENDER. Zeitschrift für Geschlecht, Kultur und Gesellschaft 2016 (3), pp. 46–60. p. 57.

²² Cf. Kubandt, Melanie (2017): Geschlechtergerechtigkeit in der Kindertageseinrichtung, pp. 6, 9, 14. https://www.kita-fachtexte.de/fileadmin/Redaktion/Publikationen/KiTaFT_Kubandt_2017_Geschlechtergerechtigkeit.pdf (retrieved: 03/12/2019).

2.8 Unnecessary medical interventions on intersex children

Recent years have seen a rise in public and political awareness in Germany of the need to protect intersex children from being subjected to medical procedures that change their sex characteristics without their valid consent. Nonetheless, there is still no statutory ban on such practices, nor has an entitlement to counselling for families of intersex children been established. Most recent data indicates that, despite the revision of medical guidelines, the relative frequency of “sex normalising” genital operations performed on children under the age of 10 did not decline over the 2005–2016 period.²³

In their coalition agreement, the parties forming the Federal Government committed to the adoption of legislative provisions making it clear that sex assignment surgery on children is permissible only if it cannot be postponed and the child's life is at risk. In October 2018, the Federal Ministry of Justice and Consumer Protection held a broad stakeholder consultation to discuss what form such a statutory ban should take. In January 2020, the Ministry published a draft bill. However, a cabinet-wide agreement has not yet been reached.

The GIHR recommends that the CEDAW Committee requests Germany to provide information on:

legislative measures being planned to ensure that medical interventions associated with sex assignment are permissible only if they cannot be postponed and the child's life is at risk, in line with the coalition agreement;

whether it intends to establish procedural safeguards in the form of a judicial review by a family court judge to verify that a medical necessity does exist or that the child in question has issued valid consent;

whether it also plans to take legislative measures to establish a legal entitlement on the part of families to specialised counselling, including peer counselling, and how it intends to establish accessible specialised counselling services throughout Germany;

what steps it has taken to set up a compensation scheme for persons subjected to such medical interventions without valid consent in the past.

²³ Klöppel, Ulrike (2016): Zur Aktualität kosmetischer Operationen “uneindeutiger” Genitalien im Kindesalter. Berlin: Zentrum für transdisziplinäre Geschlechterstudien. https://www.gender.hu-berlin.de/de/publikationen/gender-bulletin-broschueren/bulletin-texte/texte-42/kloepfel-2016_zur-aktualitaet-kosmetischer-genitaloperationen/view; and the follow-up study Klöppel, Ulrike / Hoenes, Josch / Januschke Eugen (2019): Häufigkeit normangleichender Operationen “uneindeutiger” Genitalien im Kindesalter. Berlin: Zentrum für transdisziplinäre Geschlechterstudien. <https://www.gender.hu-berlin.de/de/publikationen/gender-bulletin-broschueren/bulletin-texte/texte-44-3/bulletin44-entwurf-final.pdf/view> (both retrieved: 13/12/2019).

